

RESPONSE UNDER 37 C.F.R. §1.105

The undersigned has been advised that elite material of 'Penjul' for establishing mother plants was provided to propagators in Europe at the end of 1999 and that there were some commercial sales of 'Penjul' in Europe at the beginning of the 2000 season. It appears from the information provided to the undersigned that 13 companies received mother plants of 'Penjul' and had sales ranging from 80 plants to 14,648 plants in Europe. Royalties were paid on 42,882 plants for the year 2000 sales. Since this was a new variety, it is believed by the undersigned that some of these sales were for testing purposes, but the exact number or percentage is not known.

The undersigned has further been advised that commercial sales of 'Penjul' did not occur in the United States until the 2004/2005 season.

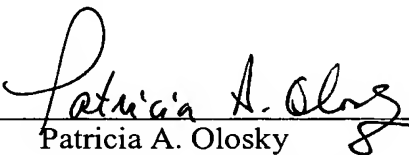
In view of the above, the scant information available in Plant Breeders' Rights publications relating to 'Penjul' would not have enabled one of ordinary skill in the art to reproduce the claimed plant. Thus, a rejection under 35 §102(b) is wholly inappropriate in this instance.

CONCLUSION

In light of the foregoing, allowance of the claim is respectfully requested.

Respectfully submitted,

THE WEBB LAW FIRM

By 

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